

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

| | | |
|--|---|----------------------------|
| James Benton, #246955, |) | C.A. No. 2:06-1590-CMC-RSC |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | OPINION and ORDER |
| |) | |
| Julie J. Armstrong, Clerk of Court for |) | |
| Charleston County, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This matter is before the court on Plaintiff's *pro se* complaint arising out of Plaintiff's attempt to file a mandamus action in the Charleston County Court of Common Pleas.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Robert S. Carr for pre-trial proceedings and a Report and Recommendation. On May 26, 2006, the Magistrate Judge issued a Report recommending that the complaint be dismissed without prejudice and without issuance and service of process, and that this complaint be deemed a "strike" for the purposes of the "three strikes" rule of 28 U.S.C. § 1915(g). The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff filed objections on June 6, 2006.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the

recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report and Recommendation only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff’s Objections, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. Plaintiff’s complaint fails to state a viable claim under 42 U.S.C. § 1983. Additionally, Plaintiff attaches to his Objections a memo from the office of Julie Armstrong, dated May 23, 2006, indicating that the petition for writ of mandamus had been filed incorrectly in the Court of General Sessions, and that it had subsequently been correctly filed in the Charleston County of Court Common Pleas, given a civil action number, and that the filing fee had been waived. *See* Exhibit A, attached to Objections filed June 6, 2006.

IT IS THEREFORE ORDERED that this matter is dismissed without prejudice and without issuance and service of process. This matter shall be deemed a “strike” under 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
June 13, 2006

C:\Documents and Settings\Guest\Local Settings\Temp\notesE1EF34\~2609697.wpd